Missouri Attorney General's Opinions - 1994

Opinion	Date	Topic	Summary
60-94	Mar 24		Letter to William Camm Seay.
92-94	Apr 27		Letter to The Honorable Bill McKenna.
116-94	Jan 14	INITIATIVES.	Review and approval pursuant to Section 116.334, RSMo 1986, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Article X of the Missouri Constitution.
117-94	Jan 18	INITIATIVES.	Review and approval pursuant to Section 116.334, RSMo 1986, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Article X of the Missouri Constitution.
140-94	Mar 11	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of an initiative petition relating to campaign contributions (your file reference ACORN-3).
141-94	Mar 11	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of an initiative petition relating to campaign contributions, including a provision dealing with excess campaign contributions (your file reference ACORN-4).
148-94	Apr 1	INITIATIVES.	Review and approval pursuant to Section 116.334, RSMo 1986, of the sufficiency as to form of a summary statement regarding an initiative petition relating to campaign contributions (your file reference ACORN-3).
150-94	Apr 1	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of an initiative petition relating to the enactment of Sections 130.150 to 130.170 limiting contributions to candidates by political parties.
151-94	Apr 29	INITIATIVES.	Review and approval pursuant to Section 116.334, RSMo 1986, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the enactment of Sections 130.150 to 130.170 limiting contributions to candidates by political parties.
152-94	Apr 20		Letter to The Honorable Norman L. Merrell.
165-94	May 27	INITIATIVES.	Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1986, of the sufficiency as to form of an initiative petition relating to the amendment of Article III of the Missouri Constitution, specifically by modifying Section 39(9) and adding a new Section 39(e).

166-94	June 3	INITIATIVES.	Review and approval pursuant to Section 116.334, RSMo 1986, of the sufficiency as to form of a summary statement regarding an initiative petition relating to the amendment of Article III of the Missouri Constitution, specifically by modifying Section 39(9) and adding a new Section 39(e).
192-94	Aug 25		Letter to The Honorable Bill Skaggs.
200-94	Oct 14	ARRESTS; POLICE. POLICE RECORDS. RECORDS. SUNSHINE LAW.	(1) Police incident reports are open records except a) as closed by Section 610.150, RSMo Supp. 1993, the emergency number "911" statute, and b) as closed under the principles of *Hyde v. City of Columbia*, 637 S.W.2d 251 (Mo. App. 1982); (2) police investigative reports are closed under Section 610.100, RSMo, as amended by Conference Committee Substitute for Senate Bill No. 554, 87th General Assembly, Second Regular Session (1994) until such time as an arrest is made.
212-94	Nov 10		Letter to the Missouri Ethics Commission.
218-94			Withdrawn

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

March 24, 1994

OPINION LETTER NO. 60-94

William Camm Seay
Dent County Prosecuting Attorney
P.O. Box 418
Salem, MO 65560

Dear Mr. Seay:

This opinion letter is in response to your question asking:

> Whether a 3rd class county salary committees' refusal to meet in accordance with Section 50.333 RSMo after an initial salary committee meeting in 1989 approved a 100% salary payment, results in an automatic approval of payment of 100% of allowable salary for 3rd class county coroners in accordance with Section 58.095 RSMo and for third class county public administrators in accordance with Section 473.739.1 RSMo.

Your question apparently arises because of an amendment in 1990 to Section 58.095, RSMo, relating to the compensation of county coroners and an amendment in 1990 to Section 473.739, RSMo, relating to the compensation of certain public administrators. Section 58.095, RSMo Supp. 1993, provides in part:

> 58.095. Compensation of county coroner--training program, attendance required, when, expenses, compensation (noncharter counties).--1. The county coroner in any county, other than in a first class chartered county, shall receive an annual salary computed on a combination

class-population basis as set forth in the following schedule. The population factor shall be as disclosed by the last federal decennial census. The provisions of this section shall not permit or require a reduction in the amount of compensation received by any person holding the office of coroner on January 1, 1988:

Population	Salary
Less than 10,000	$5,500
10,000 to 15,000	6,000
15,001 to 20,000	6,500
20,001 to 24,000	7,000
24,001 to 30,000	7,500
30,001 or more	8,000

* * *

Prior to the 1990 amendment, the schedule setting forth the combination class-population basis for the annual salary was as follows:

Class	Population	Salary
Fourth	Any	$2,000
Third	Less than 10,000	2,000
Third	10,000 to 15,000	2,500
Third	15,001 to 20,000	3,000
Third	20,001 to 24,000	3,500
Third	24,001 to 30,000	4,000
Third	30,001 or more	4,500
Second	Any	5,000

The 1990 amendment to the schedule results in the schedule showing a higher salary amount for county coroners.

Section 473.739, RSMo Supp. 1993, relating to the compensation of certain public administrators provides in part:

> 473.739. Compensation for attendance at training session, certain public administrators, expenses may be reimbursed, when (noncharter counties).--1. Each public administrator, except in counties of the first class with a charter form of government, who does not receive at least twenty-five (fifteen) thousand dollars in fees as otherwise allowed by law shall receive annual compensation of four thousand dollars and each such public administrator who does not receive at least twenty-five thousand dollars in fees may request the county salary commission for an increase in annual

> compensation and the county salary commission may authorize an additional increase in annual compensation not to exceed ten thousand dollars. (Emphasis added.)
>
> * * *

The 1990 amendment to this section added the words which are underlined above and deleted the word "fifteen" which is in parenthesis above.

Section 50.333, RSMo Supp. 1993, establishes a county salary commission in every nonchartered county. Particularly relevant to your inquiry are subsections 7 and 9 of Section 50.333 which provide in part:

> 7. For the year 1989 and every second year thereafter, the salary commission shall meet in every county as many times as it deems necessary on or prior to November thirtieth of any such year for the purpose of determining the amount of compensation to be paid to county officials. . . . The salary commission shall then consider the compensation to be paid for the next term of office for each county officer to be elected at the next general election; however, until August 28, 1990, the compensation for all commissioners of the county commission. . . . If the commission votes not to increase or decrease the compensation, the salary being paid during the term in which the vote was taken shall continue as the salary of such offices and officers during the subsequent term of office. If the salary commission votes to increase the compensation, all officers or offices, except as otherwise provided in this subsection for county commissioners, whose compensation is being considered by the commission at that time, shall receive the same percentage of the difference between the maximum allowable compensation and the compensation being paid during the term of office when the vote is taken. However, for any county in which all officers are receiving one hundred percent of the maximum allowable compensation, the commission may vote to increase the compensation of county officers without regard to any law or maximum limitation previously established by law. Such increase shall be expressed as a

> percentage of the compensation being paid during the term of office when the vote is taken, and each officer whose compensation is being established by the salary commission at that time shall receive the same percentage increase over the compensation being paid for that office during the term when the vote is taken. If the salary commission votes to decrease the compensation, all officers and offices, except as otherwise provided in this subsection for county commissioners, shall receive the same percentage decrease; however, no salary or other compensation of county officers holding office on or after May 13, 1988, shall be decreased below the compensation being paid for the particular office on the date the salary commission votes, except upon a two-thirds vote of all of the members of the salary commission.
>
> * * *
>
> 9. For the meeting in 1989 and every meeting thereafter, in the event a salary commission in any county fails, neglects or refuses to meet as provided in this section, or in the event a majority of the salary commission is unable to reach an agreement and so reports or fails to certify a salary report to the clerk of the county commission by December fifteenth of any year in which a report is required to be certified by this section, then the compensation being paid to each affected officer on such date shall continue to be the compensation paid to the affected officer during the succeeding term of office. (Emphasis added.)

Under the facts you have presented, the county salary commission has refused to meet after an initial salary commission meeting in 1989. Subsection 9 of Section 50.333 quoted above specifically addresses the situation of a county salary commission failing, neglecting or refusing to meet. Such subsection provides that the compensation being paid to each affected officer shall continue to be the compensation paid during the succeeding term of office. Where the language of a statute is plain and admits of but one meaning, there is no room for construction. State ex rel. Missouri State Board of Registration for Healing Arts v. Southworth 704 S.W.2d 219, 224 (Mo. banc 1986).

The provisions of subsection 7 of Section 50.333 highlighted above deal with situations where the county salary commission has voted not to increase or decrease

the compensation, has voted to increase the compensation, or has voted to decrease the compensation. None of these provisions is applicable to the situation you describe where the county salary commission has refused to meet.

Likewise, the 1990 amendment to Section 58.095 discussed above does not result in an automatic pay raise for the county coroner in the situation you describe. The 1990 amendment to Section 58.095 changed the schedule for computing the compensation of county coroners; however, subsection 9 of Section 50.333 specifically provides that if the county salary commission refuses to meet, then the compensation being paid to each affected officer shall continue to be the compensation paid to the affected officer during the succeeding term of office.

With regard to the county public administrator, the "additional increase in annual compensation not to exceed ten thousand dollars" added by the 1990 amendment to Section 473.739 is an amount "the county salary commission may authorize." In the situation you describe, the county salary commission has refused to meet. Therefore, there is no county salary commission authorization for the additional amount and the county public administrator would not be entitled to such additional amount automatically.

Statutes providing compensation for public officers are strictly construed against the officer. Becker v. St. Francois County, 421 S.W.2d 779, 783 (Mo. 1967). To conclude that either the coroner or public administrator is entitled to the additional compensation discussed above would violate the plain meaning of the words used in subsection 9 of Section 50.333 and would violate the rule of strict construction against the officer. See also Felker v. Carpenter, 340 S.W.2d 696, 701 (Mo. 1960).

In summary, in the situation you describe of the county salary commission refusing to meet since 1989, neither the county coroner nor the county public administrator is entitled to the additional compensation discussed above.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

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P. O. Box 899
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April 27, 1994

OPINION LETTER NO. 92-94

The Honorable Bill McKenna
Senator, District 22
State Capitol Building, Room 329
Jefferson City, Missouri 65101

92-94

Dear Senator McKenna:

This opinion letter is in response to your question asking:

> With respect to Section 381.143 as enacted by 1993 HS/HCS/SCS/SB 18, may a title insurance company organized under the laws of this state or operating under a certificate of authority in this state, or a title insurance agency or agent licensed by the Director of the Department of Insurance, create a subsidiary to enter into "construction completion guaranties" or "construction deposit guaranties" as defined by Section 381.143.1?

Section 381.143, as enacted by House Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 18, 87th General Assembly, First Regular Session (1993), , was codified as Sections 381.400, 381.403 and 381.405, RSMo Supp. 1993. Section 381.405, RSMo Supp. 1993, provides:

> 381.405. Construction and guaranty agreements not authorized for title insurance companies - title insurance against mechanic liens and insured closing letters, authorized. No licensee may enter or offer to enter into any:

(1) Construction deposit guaranty;

(2) Construction completion guaranty;

(3) Contract of guaranty or suretyship wherein the licensee agrees to answer for the debt, obligation or default of a third party, including, but not limited to, statements of responsibility for the acts or omissions of parties which would constitute an insured closing letter if the party on whose behalf the statement is made had been a title insurance agency or agent for the issuer. The provisions of this section shall not prohibit licensees from issuing title insurance against mechanics' liens, nor prohibit a title insurance company from issuing insured closing letters regarding its own duly licensed agency or agent.

Subdivision (5) of Section 381.400, RSMo Supp. 1993, defines the term "licensee" as follows:

(5) "Licensee" a title insurance company organized under the laws of this state or operating under a certificate of authority in this state, or a title insurance agency or agent licensed by the director.

When a court interprets statutory language, it must ascertain the intent of the legislature and, in doing so, it considers the plain and ordinary meaning of terms. Morton v. Brenner, 842 S.W.2d 538, 541 (Mo. banc 1992). However, the legislature's own construction of its language by means of definition of terms employed should be followed in the interpretation of the statute to which it relates and is intended to apply and supersedes commonly accepted dictionary or judicial definitions and is binding on the courts. Labor's Educational and Political Club - Independent v. Danforth, 561 S.W.2d 339, 346 (Mo. banc 1977). Furthermore, when a statute enumerates the subjects or things on which it is to operate, or the persons affected, or forbids certain things, it is to be construed as excluding from its effect all those not expressly mentioned. Giloti v. Hamm-Singer Corp., 396 S.W.2d 711, 713 (Mo. 1965).

The prohibitions contained in Section 381.405 apply to "licensees" as defined by subdivision (5) of Section 381.400. No provision of Section 381.405 purports to apply these provisions to any person or entity other than a "licensee" as defined by subdivision (5) of Section 381.400, or to the subsidiary of any such "licensee". Based on the plain and ordinary meeting of the terms contained in Section 381.405, we conclude that Section 381.405 does not prohibit a title insurance company organized under the laws of this state or operating under a certificate of authority in this state, or a title insurance agency or agent licensed by the Director of the Department of Insurance, from creating a subsidiary to enter into "construction completion guaranties" or "construction deposit guaranties" as defined by Section 381.400, RSMo Supp. 1993. We do not opine on the applicability of other provisions of insurance law to the activities of such a subsidiary entering into "construction completion guaranties" or "construction deposit guaranties".

In summary, it is the opinion of this office that Section 381.405, RSMo Supp. 1993, does not prohibit a title insurance company organized under the laws of this state or operating under a certificate of authority in this state, or a title insurance agency or agent licensed by the Director of the Department of Insurance, from creating a subsidiary to enter "construction completion guaranties" or "construction deposit guaranties" as defined by Section 381.400, RSMo Supp. 1993.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

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P. O. Box 899
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January 14, 1994

OPINION LETTER NO. 116-94

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Moriarty:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall Article X of the Constitution of Missouri be amended to limit yearly increases of total state revenues generated by new, increased, or broadened taxes, licenses and fees, including user fees, to twenty hundredths of one percent of the total state revenue during the prior fiscal year, unless approved by popular vote; make all increases in taxes, licenses, and fees, excluding user fees, by any political subdivision subject to voter approval; and prohibit the state from mandating tax increases on political subdivisions as a requirement for maintaining their corporate status or existing level of state funding?

See our Opinion Letter No. 194-93.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as

an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

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P. O. Box 899
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January 18, 1994

OPINION LETTER NO. 117-94

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Moriarty:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall a law be enacted requiring Missouri citizens to participate in a worldwide constitutional convention, if the convention is called for by a sufficient number of people worldwide; establishing qualifications of delegates who may be elected to attend the convention; providing for the initial funding of the law by borrowing no more than twenty-five cents per person from a fund established in the Missouri Treasury and funded by charging a one cent per pack tax on the sale of cigarettes; providing that the law will be rescinded if not passed by a majority of voters in the United States?

See our Opinion Letter No. 201-93.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

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March 11, 1994

OPINION LETTER NO. 140-94

The Honorable Judith K. Moriarty
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to campaign contributions (your file reference ACORN-3). A copy of the initiative petition and the proposed law which you submitted to this office on March 2, 1994, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition

or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

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JEREMIAH W. (JAY) NIXON
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P. O. Box 899
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March 11, 1994

OPINION LETTER NO. 141-94

The Honorable Judith K. Moriarty
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to campaign contributions, including a provision dealing with excess campaign contributions (your file reference ACORN-4). A copy of the initiative petition and the proposed law which you submitted to this office on March 2, 1994, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition

or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
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April 1, 1994

OPINION LETTER NO. 148-94

148-94

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall a law be enacted to limit campaign contributions to persons or committees by persons or committees per election cycle to $100 and $200 depending on the population of the political district and to $300 for statewide candidates; require disclosure by contributors of their employer or occupation when contributing in excess of $25 per person; allow persons to file complaints alleging violations of the contributions limits?

See our Opinion Letter No. 140-94.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the

petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

Jeremiah W. Nixon (by DWS)

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

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April 1, 1994

OPINION LETTER NO. 150-94

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

150-94

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the enactment of Sections 130.150 to 130.170 limiting contributions to candidates by political parties. A copy of the initiative petition and the proposed law which you submitted to this office on March 24, 1994, is attached for reference.

We approve the petition as to form.[1] However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an

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[1]The initiative petition contains a purported title. Section 116.334 provides for the Secretary of State to prepare the statement of purpose which, unless altered by a court, is the petition title. Our approval of the petition as to form should not be deemed approval of the petition title. We will consider the proposed statement of purpose prepared by your office upon its submission to us as provided by Section 116.334.

endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

Jeremiah W. Nixon (by DnD)

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
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JEREMIAH W. (JAY) NIXON
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April 29, 1994

OPINION LETTER NO. 151-94

151-94

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall a law be enacted prohibiting any candidate for public office, or any person or committee acting in the candidate's behalf, from accepting campaign contributions from political parties in excess of $1,000 and $5,000 (depending on the population of the political district or subdivision) and $20,000 for statewide candidates, per election; and prohibiting organizations, group, or associations whose affiliation are with a political party from making contributions in excess of $1,000 and $5,000 (depending on the population of the political district or subdivision) and $20,000 for statewide candidates, per election; and, allowing persons to file complaints with the Missouri Ethics Commission or file a civil action?

See our Opinion Letter No. 150-94.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

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JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
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April 20, 1994

OPINION LETTER NO. 152-94

The Honorable Norman L. Merrell
Senator, District 18
State Capitol Building, Room 423
Jefferson City, Missouri 65101

152-94

and

The Honorable Mike Lybyer
Senator, District 16
State Capitol Building, Room 333
Jefferson City, Missouri 65101

Dear Senators Merrell and Lybyer:

This opinion letter is in response to your question asking:

> Is the position of the State Geologist and that of Director of the Division of Geology and Land Survey one and the same? Does the Director of the Department of Natural Resources have the authority to establish these as two separate positions?

Along with your question, you present the following statement of facts:

> The State Geologist has served as the Director of the Division of Geology and Land Survey since the implementation of the Reorganization Act of 1974. The Director of the Department of Natural Resources proposes to separate these positions. The provisions of the Reorganization Act (see 640.010.5, RSMo) and Chapters 256 and 259, RSMo, suggest that the State Geologist must serve as the Director of the Division of Geology and Land Survey.

Section 256.010, RSMo 1986, provides that the State Geologist

may appoint such assistants and subordinates as may be deemed necessary to conduct a geological survey of the state. Section 256.010 also provides that the State Geologist is to be the Director of the Geological Survey. Section 256.050, RSMo 1986, sets forth the responsibilities and duties of the State Geologist and his/her assistants. Those duties include the duty of conducting a thorough geological survey of the state, applying "geologic engineering principles to problems of agriculture, conservation, construction and other scientific matters that may be of practical importance and interest to the welfare of the state", and preparing topographic relief maps of areas and districts of the state toward the end of preparing a complete and accurate topographic relief map of the state. Section 256.060, RSMo 1986, provides that the State Geologist "is authorized to make a survey of the water resources of the state...." The State Geologist also has certain duties with respect to the State Oil and Gas Council, the Land Reclamation Commission, and the Mining Practices Advisory Council, among others. See Section 259.030, RSMo 1986; Section 259.070, RSMo Supp. 1993; Section 259.080, RSMo 1986; Section 444.520, RSMo 1986; and Section 444.420, RSMo Supp. 1993.

The Omnibus State Reorganization Act of 1974, (now in part codified at Section 640.010, RSMo 1986), transferred all the duties, powers, and functions of the State Geologist by type I transfer to the Department of Natural Resources. Section 640.010.5 provides:

> 5. All the powers, duties and functions of the state geologist, chapter 256, RSMo, and others, are transferred by type I transfer to the department of natural resources. All the powers, duties and functions of the state land survey authority, chapter 60, RSMo, are transferred to the department of natural resources by type I transfer and the authority is abolished. All the powers, duties and functions of the state oil and gas council, chapter 259, RSMo, and others, are transferred to the department of natural resources by type II transfer. The director of the department shall appoint a state geologist who shall have the duties to supervise and coordinate the work formerly done by the departments or authorities abolished by this subsection, and shall provide staff services for the state oil and gas council. [Emphasis added.]

A "type I transfer" is defined in Section 1.7(a) of the Reorganization Act as:

> (a) under this act a **"type I transfer"** is the transfer to the new department or division of all the authority, powers, duties, functions, records, personnel, property, matters pending and all other pertinent

> vestiges of the existing department, division, agency, board, commission, unit, or program to the director of the designated department or division for assimilation and assignment within the department or division as he shall determine, to provide maximum efficiency, economy of operation and optimum service. . . .

Appendix B, RSMo 1986. However, Section 640.010.5, enacted as part of the Reorganization Act, specifically provides for the appointment of a State Geologist who shall have the specified duties. While Section 1.7(a) of the Reorganization Act deals with a type I transfer in general, Section 640.010.5, also enacted as part of the Reorganization Act, specifically assigns certain duties to the State Geologist. Where one statute deals with a particular subject in a general way, and a second statute treats a part of the same subject in a more detailed way, the more general should give way to the more specific. O'Flaherty v. State Tax Commission of Missouri, 680 S.W.2d 153, 154 (Mo. banc 1984). Because the provision in Section 640.010.5 deals specifically with the State Geologist, we conclude the State Geologist has those duties specified by statute and the Director of the Department of Natural Resources has no authority to assign to anyone else the duties assigned by statute to the State Geologist.

It is the opinion of this office that the State Geologist is to perform the duties provided by statute to the State Geologist, and that the Director of the Department of Natural Resources has no authority to assign to anyone else the duties assigned by statute to the State Geologist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

65102

P. O. Box 899
(314) 751-3321

May 27, 1994

OPINION LETTER NO. 165-94

165-94

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Moriarty:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the amendment of Article III of the Missouri Constitution, specifically by modifying Section 39(9) and adding a new Section 39(e). A copy of the initiative petition which you submitted to this office on May 27, 1994, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect

to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

June 3, 1994

OPINION LETTER NO. 166-94

166-94

The Honorable Judith K. Moriarty
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Moriarty:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall the General Assembly be authorized to permit only upon the Mississippi River and the Missouri River lotteries, gift enterprises, and games of chance to be conducted on excursion gambling boats and floating facilities?

See our Opinion Letter No. 165-94.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure

circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

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ATTORNEY GENERAL

P.O. Box 899
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August 25, 1994

OPINION LETTER NO. 192-94

192-94

The Honorable Bill Skaggs
Representative, District 31
State Capitol Building, Room 414
Jefferson City, MO 65101

Dear Representative Skaggs:

This opinion letter is in response to your question asking:

> Are the telephone records of an individual member of the General Assembly a "public record" obtainable by the public under Section 610.026, RSMo Supp. 1993, and may a state employee release the telephone records of a member's individual office without liability, absent of proper subpoena duces tecum?

You have indicated that a private party has requested telephone billing records of an individual member of the General Assembly. For the purpose of this opinion, your question will be answered as it relates to billing records of state telephones or telephone bills which are paid by the state or some division thereof.

Your question relates generally to Chapter 610, RSMo, which is commonly referred to as the Missouri Sunshine Law. Sections 610.023 through 610.026 of that chapter set forth the procedures that a public governmental body must follow when providing access to, or copies of, public records.

Section 610.010(4), RSMo Supp. 1993, broadly defines "public governmental body" as "any legislative, administrative governmental entity created by the constitution or statutes of this state. . . ." We find that the Missouri General Assembly, created by Article III of the Missouri Constitution and further defined by Chapter 21, RSMo, falls within the definition of a public governmental body as defined by Section 610.010(4).

Section 610.023.2, RSMo Supp. 1993, provides that "[e]ach public governmental body shall make available for inspection and copying by the public of that body's public records." In addition, Section 610.010(6), RSMo Supp. 1993, defines "public record" as:

> any record, whether written or electronically stored, retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared and presented to the public governmental body by a consultant or other professional service paid for in whole or in part by public funds . . . .

Telephone records of an individual member of the General Assembly utilized by the House Accounts Committee to reimburse a telephone company for services received are "record[s] . . . retained by . . . any public governmental body" pursuant to Section 610.010(6). As such, the billing records will remain public records of the General Assembly regardless of whether an individual member later reimburses the House Accounts Committee for specific calls made.

All provisions within Chapter 610, RSMo, must be construed in accordance with the statement of public policy contained in Section 610.011, RSMo Supp. 1993:

> 610.011. Liberal construction of law to be public policy.
>
> 1. It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.028 shall be liberally construed and their exceptions strictly construed to promote this public policy.
>
> 2. Except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public as set forth in Section 610.020, all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in Sections 610.023 to 610.026, and all public votes of public governmental bodies shall be recorded as set forth in Section 610.015.

In addition, Section 610.022.5, RSMo Supp. 1993, states that "[p]ublic records shall be presumed to be open unless otherwise exempt under the provisions of Section 610.021." Section 610.021, RSMo Supp. 1993, lists fifteen exceptions

authorizing a public governmental body to close records. No exception specifically relates to telephone billing records of an individual member of the General Assembly. Section 610.021(14) authorizes closure of "[r]ecords which are protected from disclosure by law." However, we find no provisions within Chapter 21, RSMo, relating to the General Assembly, which either require or allow closure of member's itemized telephone bills. We likewise find no other applicable provision of law which authorizes the closure of these records pursuant to Section 610.021(14).[1]

There may be instances when a record which documents the content of such telephone calls could lawfully be held as a closed record pursuant to Section 610.021. However, the billing records in question in this case do not disclose the subject matter discussed, and therefore, can not be held as closed records. Furthermore, the United States Supreme Court has found that persons have no expectation of privacy in telephone numbers to which they make a call. Smith v. Maryland, 442 U.S. 736 (1979); United States v. New York Telephone Co., 434 U.S. 159 (1977). Accordingly, we conclude that members' telephone billing records are public records to be made available for inspection and copying as provided in Section 610.023 through 610.026, RSMo Supp. 1993.

In summary, it is the opinion of this office that telephone billing records of an individual member of the General Assembly are public records as defined by Section 610.010(6), RSMo. Supp. 1993, to be made available for inspection and copying as provided in Sections 610.023 through 610.026, RSMo Supp. 1993.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

---

[1]Other states have addressed similar issues with varying results. However, due to the differences in the various state's constitutions, statutes, and policies, none of these cases are applicable to the ultimate determination of this issue in Missouri. See PG Publishing Co. v. County of Washington, 638 A.2d 422, 426 (Feb. 24, 1994) (holding that itemized billing statements from cellular telephone company to a county were public records within the meaning of the Right to Know Act); But see, State of Nebraska v. Primeau, Docket no. 496, Page no. 039, Lancaster County Dist. Ct. (April 18, 1994) (upholding portion of legislative bill which allowed individual legislators to determine whether any part of his or her long distance telephone bill was sensitive or confidential in nature and therefore, not required to be disclosed to the state auditor); Des Moines Register v. Dwyer, No. CL-113-61476 (Polk County Dist. Ct., May 17, 1994), appeal docketed, No. 94-901 (Iowa S. Ct., June 7, 1994) (dismissing a suit filed to enforce the Open Records Act against the Iowa senate on the basis that the legislature has the power to create rules for its own proceedings).

ARRESTS:
POLICE:
POLICE RECORDS:
RECORDS:
SUNSHINE LAW:

(1) Police incident reports are open records except a) as closed by Section 610.150, RSMo Supp. 1993, the emergency number "911" statute, and b) as closed under the principles of Hyde v. City of Columbia, 637 S.W.2d 251 (Mo. App. 1982); 2) police investigative reports are closed under Section 610.100, RSMo, as amended by Conference Committee Substitute for Senate Bill No. 554, 87th General Assembly, Second Regular Session (1994) until such time as an arrest is made.

OPINION NO. 200-94

October 14, 1994

The Honorable Craig Hosmer
Representative, District 138
State Capitol Building, Room 110B
Jefferson City, MO 65101

Dear Representative Hosmer:

This opinion is in response to your questions asking:

1. Under Section 610.100, RSMo, as amended by Conference Committee Substitute For Senate Bill No. 554, 87th General Assembly, Second Regular Session (1994), is a police incident report an open record or may a police incident report be closed?

2. Because Section 610.100 now includes a provision stating "[h]owever, notwithstanding any other provision of law, investigative reports of all law enforcement agencies are closed records until such time as an arrest is made," may a law enforcement agency in its discretion open investigative reports before an arrest is made?

3. After an arrest is made, are police investigative reports an open record or a closed record?

On the opinion request form you submitted, you state:

> For purposes of question one, I consider a police incident report to be a report prepared at the time a crime or suspected crime is reported to the police. Such report does not contain information relating to any investigative work done by the police but simply contains information often

furnished by a person relating to the commission of a crime or suspected crime.

Your questions apparently arise as a result of the amendment in 1994 to Section 610.100, RSMo. Section 610.100, as amended by Conference Committee Substitute For Senate Bill No. 554, 87th General Assembly, Second Regular Session (1994) states:

> 610.100. All law enforcement agencies of this state, of any county, and of any municipality, shall maintain records of all arrests made by such law enforcement agency. Records of arrests shall be made available to the public. However, notwithstanding any other provision of law, investigative reports of all law enforcement agencies are closed records until such time as an arrest is made. If any person is arrested and not charged with an offense against the law within thirty days of his arrest, official records of the arrest and of any detention or confinement incident thereto shall thereafter be closed records except that the disposition portion of the record may be accessed for purposes of exculpation and except as provided in section 610.120. As used in sections 610.100 to 610.150, the term "arrest" means an actual restraint of the person of the defendant, or by his submission to the custody of the officer, under authority of a warrant or otherwise for a criminal violation which results in the issuance of a summons or the person being booked. The officer must inform the defendant by what authority he acts, and shall also show the warrant if required. [Emphasis added.]

The sentence highlighted above by underlining was added by the 1994 amendment to the section.

With respect to "police investigative reports" Section 610.100 as amended in 1994 by Senate Bill No. 554 provides in part: "However, notwithstanding any other provision of law, investigative reports of all law enforcement agencies are closed records until such time as an arrest is made." Based on this amendment, police investigative reports are to be closed records until such time as an arrest is made.

The issue for consideration is what materials constitute "investigative reports" for purposes of the statute. The term "investigative reports" is not defined by statute. Principles of statutory interpretation require ascertaining the legislative intent from the language of the act, considering words used in their plain and ordinary meaning. Sullivan v. Carlisle, 851 S.W.2d 510, 512 (Mo. banc 1993). Undefined words are given their plain and ordinary meaning as found in the dictionary in order to ascertain the intent of the lawmakers. Asbury v. Lombardi, 846 S.W.2d 196, 201 (Mo. banc 1993). Webster's Third

New International Dictionary defines "investigate" as "to make a systematic examination; study." Using the dictionary definition, the "investigative reports" referred to in the newly-added provision of Section 610.100 would include materials gathered by the police in inquiring into the crime or suspected crime. While it is not feasible to itemize all of the information that might be deemed "investigative," materials containing information such as the names of suspects, leads to be followed, laboratory test results, interviews with suspects or possible suspects, and interviews with witnesses initiated by the police are a few examples of materials that would be closed under the newly-added provision in Section 610.100.

Such "investigative reports" are distinguishable from "incident reports." Webster's Third New International Dictionary defines "incident" as "an occurrence of an action or situation felt as a separate unit of experience,. . .an uncommon happening." An incident report would contain information about the crime or suspected crime that has occurred but would not contain information relating to the investigation of such crime by the police. An incident report might include the date and time of a crime, the type of crime, the location of the crime, and similar information. Such "incident report" would contain information relating to the particular event, occurrence that is a crime or suspected crime.

In some instances, the same document may contain material deemed part of a "police incident report" and material deemed part of a "police investigative report." In such instances, the document may need to be revised so as to segregate material deemed part of a "police incident report" from that which would constitute a "police investigative report." Section 610.024, RSMo Supp. 1993.

There are no statutory provisions that relate specifically to "police incident reports." Section 610.010(6), RSMo Supp. 1993, defines a "public record" as "any record ... retained by or of any public governmental body . . . ." Section 610.011 RSMo Supp. 1993, provides in part:

> 610.011. Liberal construction of law to be public policy. -- 1. It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.028 shall be liberally construed and their exceptions strictly construed to promote this public policy.
>
> 2. Except as otherwise provided by law, ... all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to 610.026, and all public votes of public

governmental bodies shall be recorded as set forth in section 610.015.

Section 610.023.2, RSMo Supp. 1993, provides in part "[e]ach public governmental body shall make available for inspection and copying by the public of that body's public records." There is no statutory provision that specifically closes police incident reports. Therefore, such "police incident reports" are public records open for inspection and copying except as otherwise provided by law.

There are two exceptions which authorize closure of all or part of a "police incident report." The first exception is Section 610.150, RSMo Supp. 1993, which provides:

> 610.150. "911" telephone reports confidential, exceptions.-- Any information acquired by a law enforcement agency by way of a complaint or report of a crime made by telephone contact using the emergency number, "911", shall be inaccessible to the general public. Such information shall be available upon request by law enforcement agencies or the division of workers' compensation or pursuant to a valid court order authorizing disclosure upon motion and good cause shown.

Based on Section 610.150, a police incident report is closed to the general public to the extent of any "information acquired by a law enforcement agency by way of a complaint or report of a crime made by telephone contact using the emergency number, '911'."

A second exception is derived from Hyde v. City of Columbia, 637 S.W.2d 251 (Mo.App. 1982). In the Hyde case, the court determined that the name and address of a victim of crime who can identify an assailant not yet in custody is not a public record under the Sunshine Law. Id., 637 S.W. 2d at 263. [Court's emphasis.] Based on the Hyde case, the name and address of a victim who can identify an assailant who has not been apprehended must be deleted from an incident report before such a report is made public. Furthermore, information on an incident report which could lead to determination of the name and address of a victim who can identify an assailant who has not been apprehended must be deleted before such report is made public. In Attorney General Opinion Letter No. 42-86, we stated:

> . . . it is quite clear that even though a situation might not fall directly under Hyde, it may fall within the theory and teachings of Hyde . . . .

> Records may be or are closed because of the provisions of other statutes and, as extended by Hyde, because of other requirements for closure or deletion on a theory of law recognizing personal privacy, the efficient suppression and punishment of crime, the protection of third persons, or the like.

Id. at 4.

To address your second question regarding whether Section 610.100, as amended in 1994 by Senate Bill No. 554, authorizes a law enforcement agency to utilize its discretion to open investigative reports before an arrest is made, we must look to the plain language of the amendment.[1] Legislative intent should be ascertained from the language used, to give effect to that intent if possible, and to consider words in their plain and ordinary meaning. Brownstein v. Rhomberg-Haglin and Associates, Inc., 824 S.W.2d 13, 15 (Mo. banc 1992). The language of Section 610.100 that "investigative reports of all law enforcement agencies are closed records until such time as an arrest is made" (emphasis added), suggests that closure is mandatory, rather than discretionary.

Related clauses are to be considered when construing a particular portion of a statute. Marre v. Reed, 775 S.W.2d 951, 953 (Mo. banc 1989). If interpreted as mandating closure of law enforcement investigative reports, Section 610.100, as amended, would remain consistent with other provisions for closure contained within Sections 610.100 *et seq.* RSMo Supp. 1993, (commonly referred to as the Arrest Records portion of the Missouri Sunshine Law). For example, Section 610.100 in pertinent part, states:

> If any person is arrested and not charged with an offense against the law within thirty days of his arrest, official records of the arrest and of any detention or confinement incident thereto shall thereafter be closed records except that the disposition portion of the record may be accessed for purposes of exculpation and except as provided in section 610.120. [Emphasis added.]

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[1]The discussion herein does not preclude a law enforcement agency from releasing selected information that might assist in the apprehension of the criminal such as a description of the suspect.

Section 610.105 mandates that:

> If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated except that the disposition portion of the record may be accessed for purposes of exculpation and except as provided in section 620.120. [Emphasis added.]

Interpreting closure of law enforcement investigative reports as mandatory until such time as an arrest is made is congruent with the intended purpose of other statutory provisions which ensure that persons who have been charged with crimes but not thereafter convicted are not burdened with the stigma of being charged with a criminal offense. See State v. Kraus, 530 S.W.2d 684 (Mo. banc 1975) (interpreting Section 195.290, RSMo Supp. 1975). Similarly, if an arrest is not made, named suspects should not suffer the stigma of being so named.

A third consideration when construing the effect of Senate Bill No. 554 on law enforcement investigative reports requires that we examine the placement of the amendment by the legislature within Section 610.100. As previously discussed, Sections 610.100, *et seq.*, RSMo, contain numerous provisions which prohibit the disclosure of certain information under specific circumstances. In contrast, Section 610.021, RSMo Supp. 1993, enumerates fifteen (15) subsections where a public governmental body is authorized to close certain records. The language of Section 610.021, in and of itself, appears discretionary as it empowers a public governmental body to close records but does not mandate that such records be closed. Because the closure of law enforcement investigative reports is addressed within the Arrest Records portion of the Sunshine Law, rather than under the discretionary closure provisions provided by Section 610.021, we may infer that the legislature intended this closure provision to be mandatory as well.

Your third question refers specifically to the status of police investigative reports after such time as an arrest is made. The Missouri Supreme Court has promulgated specific rules which regulate the disclosure of information upon the filing of the indictment or information in criminal proceedings. Missouri Supreme Court Rules 25.01 *et seq.*

The Supreme Court is authorized to promulgate such rules pursuant to Article V, Section 5 of the Missouri Constitution as amended in 1976:

> The supreme court may establish rules relating to practice,

> procedure and pleading for all courts . . . which shall have the force and effect of law . . . . Any rule may be annulled or amended in whole or in part by a law limited to the purpose.

Mo. Const,. Art.V, Sec. 5. In those cases where the Missouri Supreme Court adopts a rule in accordance with the above constitutional provision, and such rule is "inconsistent with a statute and has not been annulled or amended by later enactment of the legislature, the rule supersedes the statute." State ex. rel. McCulloch v. Lasky, 867 S.W.2d 697, 699 (Mo.App. 1993). Furthermore, "a statute must specifically refer to a rule in order to amend or annul it." State v. Conklin, 767 S.W.2d 112, 118 (Mo.App. 1989).

Supreme Court Rules 25.01, *et seq.*, are procedural in nature. These rules set forth specific procedures and timing requirements which mandate when certain information in the possession of the state must be made available to a criminal defendant. For instance, Rule 25.02 sets forth the time frame for discovery requests to be served and the time such answers are to be filed. In addition, Rules 25.03, 25.04, 25.07, 25.08, 26.01, 26.02 and 26.03 provide a framework for pre-trial discovery and all relevant disclosures of information or materials. Conversely, Rules 25.10 and 25.11 regulate when information or materials are not subject to disclosure. When viewed in their entirety, these provisions appear to be inconsistent with the idea that all police investigative reports are "open" public records once an arrest is made.

Section 610.100, as amended by Senate Bill No. 554, does not contain any provisions expressly referring to Rules 25.01 *et seq.*, or purporting to amend or annul these rules. Therefore, Rules 25.01 *et seq.,* govern the disclosure of certain information pertaining to a criminal case upon the filing of the indictment or information. To the extent those rules mandate the timing and substance of disclosure of certain information contained within a police investigative report, the Supreme Court Rules of Criminal Procedure must govern. To find otherwise would be to completely circumvent the provisions of Supreme Court Rules 25.01 *et seq.*

However, upon the completion of the criminal legal action, the status of the police investigative report must be reevaluated. The disposition of the criminal proceeding impacts whether the police investigative report is an open record or a closed record. There is no express statutory provision closing police investigative reports after the completion of the criminal legal action similar to the new provision in Section 610.100 which closes such investigative reports "until such time as an arrest is made." So in most situations the police investigative report becomes an open record at the conclusion of the criminal legal action. However, as discussed in Missouri Attorney General Opinion

Letter No. 42-86, issued April 1, 1986, when official records of the arrest or case are closed, the investigative reports are also closed. This opinion, in pertinent part, states:

> Although the above statutes do not specifically refer to police investigative reports, they do refer to records of the arrest and official records pertaining to the case. The purpose of these statutes would be thwarted if such reports were to remain open while the arrest records or other case records were closed. For example, Section 610.105, as set forth above, mandates the closure of case records if a defendant is charged but not convicted. The purpose of this type of statute is to ensure that persons who have been charged with crimes but not thereafter convicted are not burdened with the stigma of being charged with a criminal offense which they may not have committed. See State v. Krause, 530 S.W.2d 684 (Mo. banc 1975) (interpreting Section 195.230, RSMo Supp. 1975). Closing only the case record, however, would be ineffective in alleviating the stigma of the criminal charge if the public was permitted to obtain the same information from pre-arrest investigative reports. In other words, if the pre-arrest investigative reports remain open, Section 610.105 becomes meaningless. Likewise, the closing of only the arrest and incarceration records under Section 610.100, is a futile effort if the public has access to the same information by examining the police investigative reports.
>
> We note that in Brown v. Weir, 675 S.W.2d 135, 140 (Mo.App. 1984) and Wilson v. McNeal, 575 S.W.2d 802, 810 (Mo.App. 1979) it was held that records of a closed meeting are closed despite the absence of a statute closing such records.
>
> It is presumed that the legislature does not intend to enact absurd laws and the courts favor construction of statutes which avoid unnecessary and unreasonable results. State ex rel. McNary v. Hais, 670 S.W.2d 494, 495 (Mo. banc 1984). It is also to be presumed that legislative action is intended to have some substantive effect and that the statute must be construed in light of the purpose that the legislature sought to accomplish. State ex rel. Bell v. City of Fulton 642

> S.W.2d 617, 620-621 (Mo. banc 1982). Since it would be useless and unreasonable to require the closure of arrest and case records and not also require the closure of police investigative reports, it is our opinion that the law favors the construction which requires the closure of police investigative reports when a person is arrested but not charged, or when a person is charged but the charge subsequently is nolle prossed, dismissed or the accused is found not guilty or imposition of sentence is suspended. Accordingly, we conclude that all investigative records are included in the provisions requiring the closure of official records of the arrest and official records pertaining to the case.

Attorney General Opinion Letter No. 42-86 at pp. 2-3.

CONCLUSION

It is the opinion of this office that 1) police incident reports are open records except a) as closed by Section 610.150, RSMo Supp. 1993, the emergency number "911" statute, and b) as closed under the principles of Hyde v. City of Columbia, 637 S.W.2d 251 (Mo.App. 1982); 2) police investigative reports are closed under Section 610.100, RSMo, as amended by Conference Committee Substitute for Senate Bill No. 554, 87th General Assembly, Second Regular Session (1994) until such time as an arrest is made.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

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ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

November 10, 1994

OPINION LETTER NO. 212-94

Missouri Ethics Commission
Post Office Box 1254
Jefferson City, Missouri 65102

212-94

Ladies and Gentlemen:

This opinion letter is in response to your question asking:

> What is the effective date of the statutory provisions of Proposition A which was approved by the voters at the general election on November 8, 1994?

Proposition A, approved November 8, 1994, was proposed by initiative petition and includes statutory provisions limiting campaign contributions, among other campaign finance provisions.

Article III, Section 51 of the Missouri Constitution sets forth the effective date of statutory measures proposed by initiative petition. Such section states in pertinent part: "Except as provided in this constitution, any measure proposed shall take effect when approved by a majority of the votes cast thereon."

In State ex rel. Elsas v. Missouri Workmen's Compensation Commission, 318 Mo. 1004, 2 S.W.2d 796 (1928) the Missouri Supreme Court concluded the effective date of an act submitted for a referendum election was the date of the election. The case involved a challenge to the effective date of the Workmen's Compensation Act. The primary issue was whether the Workmen's Compensation Act became effective immediately following the general election at which it was approved upon referendum, November 2, 1926, or it became effective on November 16, 1926, the date of the Governor's proclamation declaring the law approved. The Court held

that the effective date of the Workmen's Compensation Act was the date of the election, citing Article IV, Section 57 of the Missouri Constitution (constitutional amendment of November 1908) then in effect. Article IV, Section 57 stated in pertinent part: "Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise." The Court, analyzing the plain and unambiguous language of Article IV, Section 57, concluded that the constitutional provision precluded the idea of any effective date other than the election date.

Article IV, Section 57 has been replaced in the Missouri Constitution by Article III, Section 52(b) which states in pertinent part: "Any measure referred to the people shall take effect when approved by a majority of the votes cast thereon, and not otherwise." Although Article III, Section 52(b) addresses referendums, Article III, Section 51 for initiatives has substantially similar language: "Except as provided in this constitution, any measure proposed shall take effect when approved by a majority of the votes cast thereon." Therefore, because of the similarity between the language considered by the Missouri Supreme Court in State ex rel. Elsas v. Missouri Workmen's Compensation Commission, supra, and the language of the current Article III, Section 51, we conclude Proposition A became effective on election day when approved by a majority of the votes cast. See also Missouri Attorney General Opinion No. 5, Bates, March 27, 1950, concluding that an act referred to a vote of the people becomes effective on the date of its approval by a majority of the votes cast thereon.

In summary, it is the opinion of this office that Proposition A became effective upon its approval by the voters on November 8, 1994.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure:
Opinion No. 5, Bates, March 27, 1950